

110TH CONGRESS  
1ST SESSION

# S. 1944

To provide justice for victims of state-sponsored terrorism.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2007

Mr. LAUTENBERG (for himself, Mr. SPECTER, Mr. MENENDEZ, Mr. CORNYN, Mr. COLEMAN, Mr. LOTT, Mr. LIEBERMAN, Mr. SCHUMER, Mrs. CLINTON, Mr. CASEY, Ms. COLLINS, Mr. GRAHAM, Mr. BIDEN, Mr. STEVENS, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide justice for victims of state-sponsored terrorism.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Justice for Victims  
5       of State Sponsored Terrorism Act”.

6       **SEC. 2. TERRORISM EXCEPTION TO IMMUNITY.**

7       (a) IN GENERAL.—Chapter 97 of title 28, United  
8       States Code, is amended by inserting after section 1605  
9       the following:

1 **“§ 1605A. Terrorism exception to the jurisdictional**  
2 **immunity of a foreign state**

3 “(a) IN GENERAL.—

4 “(1) NO IMMUNITY.—A foreign state shall not  
5 be immune from the jurisdiction of courts of the  
6 United States or of the States in any case not other-  
7 wise covered by this chapter in which money dam-  
8 ages are sought against a foreign state for personal  
9 injury or death that was caused by an act of torture,  
10 extrajudicial killing, aircraft sabotage, hostage tak-  
11 ing, or the provision of material support or resources  
12 (as defined in section 2339A of title 18) for such an  
13 act if such act or provision of material support is en-  
14 gaged in by an official, employee, or agent of such  
15 foreign state while acting within the scope of his or  
16 her office, employment, or agency.

17 “(2) CLAIM HEARD.—The court shall hear a  
18 claim under this section if—

19 “(A) the foreign state was designated as a  
20 state sponsor of terrorism under section 6(j) of  
21 the Export Administration Act of 1979 (50  
22 U.S.C. App. 2405(j)) or section 620A of the  
23 Foreign Assistance Act of 1961 (22 U.S.C.  
24 2371) at the time the act occurred, unless later  
25 designated as a result of such act;

26 “(B) the claimant or the victim was—

1           “(i) a national of the United States  
2           (as that term is defined in section  
3           101(a)(22) of the Immigration and Nation-  
4           ality Act (8 U.S.C. 1101(a)(22));

5           “(ii) a member of the Armed Forces  
6           of the United States (as that term is de-  
7           fined in section 976 of title 10); or

8           “(iii) otherwise an employee of the  
9           government of the United States or one of  
10          its contractors acting within the scope of  
11          their employment when the act upon which  
12          the claim is based occurred; or

13          “(C) where the act occurred in the foreign  
14          state against which the claim has been brought,  
15          the claimant has afforded the foreign state a  
16          reasonable opportunity to arbitrate the claim in  
17          accordance with the accepted international rules  
18          of arbitration.

19          “(b) DEFINITION.—For purposes of this section—

20                 “(1) the terms ‘torture’ and ‘extrajudicial kill-  
21                 ing’ have the meaning given those terms in section  
22                 3 of the Torture Victim Protection Act of 1991 (28  
23                 U.S.C. 1350 note);

1           “(2) the term ‘hostage taking’ has the meaning  
2           given that term in Article 1 of the International  
3           Convention Against the Taking of Hostages; and

4           “(3) the term ‘aircraft sabotage’ has the mean-  
5           ing given that term in Article 1 of the Convention  
6           for the Suppression of Unlawful Acts Against the  
7           Safety of Civil Aviation.

8           “(c) TIME LIMIT.—An action may be brought under  
9           this section if the action is commenced not later than the  
10          latter of—

11           “(1) 10 years after April 24, 1996; or

12           “(2) 10 years from the date on which the cause  
13          of action arose.

14          “(d) PRIVATE RIGHT OF ACTION.—A private cause  
15          of action may be brought against a foreign state des-  
16          ignated under section 6(j) of the Export Administration  
17          Act of 1979 (50 U.S.C. 2405(j)), and any official, em-  
18          ployee, or agent of said foreign state while acting within  
19          the scope of his or her office, employment, or agency which  
20          shall be liable to a national of the United States (as that  
21          term is defined in section 101(a)(22) of the Immigration  
22          and Nationality Act (8 U.S.C. 1101(a)(22)), a member of  
23          the Armed Forces of the United States (as that term is  
24          defined in section 976 of title 10), or an employee of the  
25          government of the United States or one of its contractors

1 acting within the scope of their employment or the legal  
2 representative of such a person for personal injury or  
3 death caused by acts of that foreign state or its official,  
4 employee, or agent for which the courts of the United  
5 States may maintain jurisdiction under this section for  
6 money damages which may include economic damages,  
7 solatium, pain, and suffering, and punitive damages if the  
8 acts were among those described in this section. A foreign  
9 state shall be vicariously liable for the actions of its offi-  
10 cials, employees, or agents.

11 “(e) ADDITIONAL DAMAGES.—After an action has  
12 been brought under subsection (d), actions may also be  
13 brought for reasonably foreseeable property loss, whether  
14 insured or uninsured, third party liability, and life and  
15 property insurance policy loss claims.

16 “(f) SPECIAL MASTERS.—

17 “(1) IN GENERAL.—The Courts of the United  
18 States may from time to time appoint special mas-  
19 ters to hear damage claims brought under this sec-  
20 tion.

21 “(2) TRANSFER OF FUNDS.—The Attorney  
22 General shall transfer, from funds available for the  
23 program under sections 1404C of the Victims Crime  
24 Act of 1984 (42 U.S.C. 10603c) to the Adminis-  
25 trator of the United States District Court in which

1 any case is pending which has been brought pursu-  
2 ant to section 1605(a)(7) such funds as may be re-  
3 quired to carry out the Orders of that United States  
4 District Court appointing Special Masters in any  
5 case under this section. Any amount paid in com-  
6 pensation to any such Special Master shall con-  
7 stitute an item of court costs.

8 “(g) APPEAL.—In an action brought under this sec-  
9 tion, appeals from orders not conclusively ending the liti-  
10 gation may only be taken pursuant to section 1292(b) of  
11 this title.

12 “(h) PROPERTY DISPOSITION.—

13 “(1) IN GENERAL.—In every action filed in a  
14 United States district court in which jurisdiction is  
15 alleged under this section, the filing of a notice of  
16 pending action pursuant to this section, to which is  
17 attached a copy of the complaint filed in the action,  
18 shall have the effect of establishing a lien of lis  
19 pendens upon any real property or tangible personal  
20 property located within that judicial district that is  
21 titled in the name of any defendant, or titled in the  
22 name of any entity controlled by any such defendant  
23 if such notice contains a statement listing those con-  
24 trolled entities.

1           “(2) NOTICE.—A notice of pending action pur-  
 2           suant to this section shall be filed by the clerk of the  
 3           district court in the same manner as any pending  
 4           action and shall be indexed by listing as defendants  
 5           all named defendants and all entities listed as con-  
 6           trolled by any defendant.

7           “(3) ENFORCEABILITY.—Liens established by  
 8           reason of this subsection shall be enforceable as pro-  
 9           vided in chapter 111 of this title.”.

10          (b) AMENDMENT TO CHAPTER ANALYSIS.—The  
 11          chapter analysis for chapter 97 of title 28, United States  
 12          Code, is amended by inserting after the item for section  
 13          1605 the following:

          “1605A. Terrorism exception to the jurisdictional immunity of a foreign state.”.

14          **SEC. 3. CONFORMING AMENDMENTS.**

15          (a) PROPERTY.—Section 1610 of title 28, United  
 16          States Code, is amended by adding at the end the fol-  
 17          lowing:

18           “(g) PROPERTY IN CERTAIN ACTIONS.—

19           “(1) IN GENERAL.—The property of a foreign  
 20           state, or agency or instrumentality of a foreign  
 21           state, against which a judgment is entered under  
 22           this section, including property that is a separate ju-  
 23           ridical entity, is subject to execution upon that judg-  
 24           ment as provided in this section, regardless of—

1           “(A) the level of economic control over the  
2           property by the government of the foreign state;

3           “(B) whether the profits of the property go  
4           to that government;

5           “(C) the degree to which officials of that  
6           government manage the property or otherwise  
7           control its daily affairs;

8           “(D) whether that government is the sole  
9           beneficiary in interest of the property; or

10          “(E) whether establishing the property as  
11          a separate entity would entitle the foreign state  
12          to benefits in United States courts while avoid-  
13          ing its obligations.

14          “(2) UNITED STATES SOVEREIGN IMMUNITY IN-  
15          APPLICABLE.—Any property of a foreign state, or  
16          agency or instrumentality of a foreign state, to  
17          which paragraph (1) applies shall not be immune  
18          from execution upon a judgment entered under this  
19          section because the property is regulated by the  
20          United States Government by reason of action taken  
21          against that foreign state under the Trading With  
22          the Enemy Act or the International Emergency Eco-  
23          nomic Powers Act.”.

24          (b) VICTIMS OF CRIME ACT.—Section 1404C(a)(3)  
25 of the Victims of Crime Act of 1984 (42 U.S.C.

1 10603c(a)(3)) is amended by striking “December 21,  
2 1988, with respect to which an investigation or” and in-  
3 serting “October 23, 1983, with respect to which an inves-  
4 tigation or civil or criminal”.

5 (c) GENERAL EXCEPTION.—Section 1605 of title 28,  
6 United States Code, is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (5)(B), by inserting “or”  
9 after the semicolon;

10 (B) in paragraph (6)(D), by striking “; or”  
11 and inserting a period; and

12 (C) by striking paragraph (7); and

13 (2) by striking subsections (e) and (f).

14 **SEC. 4. APPLICATION TO PENDING CASES.**

15 (a) IN GENERAL.—The amendments made by this  
16 Act shall apply to any claim arising under section 1605A  
17 or 1605(g) of title 28, United States Code, as added by  
18 this Act.

19 (b) PRIOR ACTIONS.—Any judgment or action  
20 brought under section 1605(a)(7) of title 28, United  
21 States Code, or section 101(c) of Public Law 104–208  
22 after the effective date of such provisions relying on either  
23 of these provisions as creating a cause of action, which  
24 has been adversely affected on the grounds that either or  
25 both of these provisions fail to create a cause of action

1 opposable against the state, and which is still before the  
2 courts in any form, including appeal or motion under Fed-  
3 eral Rule of Civil Procedure 60(b), shall, on motion made  
4 to the Federal District Court where the judgment or ac-  
5 tion was initially entered, be given effect as if it had origi-  
6 nally been filed pursuant to section 1605A(d) of title 28,  
7 United States Code. The defenses of res judicata, collat-  
8 eral estoppel and limitation period are waived in any re-  
9 filed action described in this paragraph and based on the  
10 such claim. Any such motion or re-filing must be made  
11 not later than 60 days after enactment of this Act.

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